United Nations A/CN.9/809

General Assembly

Distr.: General
7 May 2014

Original: English

United Nations Commission on International Trade Law
Forty-seventh session
New York, 7-18 July 2014

Coordination activities

Note by the Secretariat

Contents

		Paragraphs	Page
I.	Introduction	1-4	2
II.	Coordination activities	5-29	2
	A. The International Institute for the Unification of Private Law and the Hague Conference on Private International Law	5-8	2
	B. Other organizations	9-29	3

V.14-03045 (E) 210514 220514

Please recycle

I. Introduction

1. In resolution 34/142 of 17 December 1979, the General Assembly requested the Secretary-General to place before the United Nations Commission on International Trade Law a report on the legal activities of international organizations in the field of international trade law, together with recommendations as to the steps to be taken by the Commission to fulfil its mandate of coordinating the activities of other organizations in the field.

2. In resolution 36/32 of 13 November 1981, the General Assembly endorsed various suggestions by the Commission to implement further its coordinating role in the field of international trade law.[1] Those suggestions included presenting, in addition to a general report of activities of international organizations, reports on specific areas of activity focusing on work already under way and areas where unification work was not under way but could appropriately be undertaken.[2]

3. This report, prepared in response to resolution 34/142 and in accordance with UNCITRAL's mandate,[3] provides information on the activities of other international organizations active in the field of international trade law in which the UNCITRAL secretariat has participated, principally working groups, expert groups and plenary meetings. The purpose of that participation has been to ensure coordination of the related activities of the different organizations, share information and expertise and avoid duplication of work and the resultant work products.

4. The Commission may wish to note the increasing involvement of the Secretariat in initiatives of other organizations. This is a recurrent pattern in recent years, consistent with the increase in the Secretariat's technical assistance activities,[4] and which is expected to continue and even increase in future.

II. Coordination activities

A. The International Institute for the Unification of Private Law and the Hague Conference on Private International Law

International Institute for the Unification of Private Law (Unidroit)

5. The Secretariat participated in the ninety-second session of the Unidroit Governing Council (Rome, 8-10 May 2013). At that session, among other things, the Governing Council adopted the Model Clauses for the Use of the Unidroit Principles of International Commercial Contracts. As per the statement made on behalf of Unidroit at the forty-sixth session of the Commission, in 2013, the UNCITRAL secretariat had provided comments to the draft Model Clauses in order to clarify the relationship between the Unidroit Principles and article 7 of the United

[1] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 17* (A/36/17), paras. 93-101.
[2] Ibid., para. 100.
[3] See General Assembly Resolution 2205 (XXI), sect. II, para. 8.
[4] See A/CN.9/775.

Nations Sales Convention. Those observations had been reflected through an amendment to the comments accompanying the Model Clauses.[5]

Hague Conference on Private International Law (HccH)

6. The Secretariat participated as an observer in meetings of the HccH Working Group on Choice of Law in International Contracts (The Hague, The Netherlands, 24-26 June 2013 and 27-28 January 2014). Over the course of these meetings, the Working Group continued its work on a non-binding instrument, i.e. a draft set of principles on choice of law in international commercial contracts and related commentary. The principles and the commentary are projected to be finalized within the next year.

7. The chairperson of UNCITRAL participated in the HccH Council on General Affairs and Policy (The Hague, The Netherlands, 8-10 April 2014). The chairperson thanked the HccH and the Working Group on Choice of Law in International Contracts for their continued close cooperation with the UNCITRAL secretariat on this project. In addition, the chairperson noted that the HccH may wish to submit, once finalized, the principles on choice of law in international commercial contracts to UNCITRAL for consideration for endorsement at a future session of the Commission.

Joint activities with Unidroit and HccH

8. The UNCITRAL secretariat participated in the tri-partite coordination meeting with Unidroit and HccH, hosted by the HccH, at which current work of the three organizations and potential areas for cooperation were discussed (The Hague, The Netherlands, 9-11 April 2014). The event consolidated the 2013 and 2014 meetings, since no meeting took place in 2013.

B. Other organizations

9. The Secretariat undertook other coordination activities with various international organizations. Most of such activities included provision of comments on documents drafted by those organizations, and participation in various meetings and conferences with the purpose of briefing about the work of UNCITRAL or to provide an UNCITRAL perspective on the matters at stake.

1. General

10. The Secretariat remained actively involved in the Inter-Agency Cluster on Trade and Productive Capacity[6] attending meetings (via audio conference) and providing inputs to different documents and initiatives of the Cluster. In the period under review, the Secretariat did not take part in any outreaching event of the Cluster.

---

[5] See also *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 252.

[6] See A/CN.9/725.

11. Upon request of the Italian Government, the Secretariat held consultations with the Italian Ministry of Foreign Affairs and other public and private entities (Rome, 6-7 May 2013).

12. The Secretariat participated in the New York Global Law Week, organized by the New York State Bar Association, and delivered a speech at the concluding plenary session to address the theme "Developing International Commercial Law: The Next Challenges and Opportunities" (New York, United States of America, 17 May 2013).

13. At the occasion of the twenty-seventh session of the UNCITRAL Working Group III (Online Dispute Resolution) (New York, United States of America, 20-24 May 2013), the Secretariat also held meetings with the Rule of Law Unit, Executive Office of the Secretary-General, which resulted in the Secretariat drafting a guidance note of the Secretary-General on the promotion of the rule of law in commercial relations (see para. 18 below).[7]

14. The Secretariat and the chairperson of UNCITRAL attended two high-level meetings: "Business for Peacebuilding", co-convened by the United Nations Peacebuilding Commission (PBC) and the United Nations Global Compact; and "Entrepreneurship for Development", a high-level thematic debate convened by the President of the General Assembly (New York, United States of America, 25-26 June 2013). These events provided the opportunity to highlight the work of UNCITRAL and its contribution to both peacebuilding and development. The UNCITRAL chairperson served as moderator of a panel at the peacebuilding event, bringing together stakeholders contributing to corporate activities in a peacebuilding context, either through project financing or commercial capacity development. He also intervened at the "Entrepreneurship for Development" event to outline how UNCITRAL's work helps establish legal certainty in international commercial dealings, thereby furthering economic development.

15. The Secretariat was invited to participate in the initiatives of the Investment Security in the Mediterranean Support Programme (ISMED) which seeks to enhance the efficiency of legal investment protection measures and guarantee instruments available for medium-to-large scale infrastructure projects in the Southern Mediterranean region. The Programme is implemented by the Middle East and North Africa Investment Programme (MENA) of the Organization for Economic Cooperation and Development (OECD). The Secretariat attended an Informal Meeting of the ISMED Working Group (Paris, 12 September 2013) and the official launch of such Working Group (Paris, 9 December 2013), which will include MENA economies, OECD member countries, and invited international organizations, individual experts or representatives of companies and agencies involved in the field. Arbitration and international dispute settlement being one of the focus areas of the Working Group, the UNCITRAL secretariat has been invited to chair the relevant task force.

[7] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 272.

Rule of Law

16. The Secretariat undertook or facilitated several coordination activities on the Rule of Law in those areas of work of the United Nations and other entities that are of general relevance to UNCITRAL. The activities listed below are in addition to those already reported at the forty-sixth session of the Commission, in 2013.[8]

17. The Secretariat contributed to the 2013 report of the Secretary-General on strengthening and coordinating United Nations rule of law activities (A/68/213) and to the preparation of the 2014 reports of the Secretary-General on "Globalization and its impact on the full enjoyment of all human rights" and on "Rule of law and its linkages with peace and security, human rights and development". The Secretariat also provided comments on the draft Global Rule of Law Business Principles, currently under consideration by the United Nations Secretariat.

18. The Secretariat was invited to contribute a paper to the Inter-regional Workshop on Regional Organizations, the Rule of Law and Constitutional Governance, organized by the International Institute for Democracy and Electoral Assistance (International IDEA) (The Hague, The Netherlands, 16-17 October 2013).[9] A paper on UNCITRAL's legal cooperation programmes with a regional dimension presented by the UNCITRAL secretariat to that workshop is expected to be published among materials of the workshop.

19. A draft guidance note of the Secretary-General on the United Nations approach to the promotion of the rule of law in commercial relations, about which the Commission was informed at its forty-sixth session, in 2013,[10] was presented by the Office of Legal Affairs of the United Nations Secretariat at the expert level meeting of the Rule of Law Coordination and Resource Group of the United Nations[11] on 20 December 2013. The text is currently undergoing the final approval and is expected eventually to be circulated across the United Nations, including to the Resident Coordinators and country teams.

20. It may be recalled that, at its forty-sixth session, in 2013, the Commission learned about initiatives across the United Nations system to formulate sustainable development goals and a post-2015 international development agenda, in particular the work of the Open Working Group on Sustainable Development Goals.[12] At that time, the Commission noted the relevance of UNCITRAL work to these initiatives and requested its Bureau at the forty-sixth session and its Secretariat to take appropriate steps to ensure that the areas of work of UNCITRAL and the role of UNCITRAL in the promotion of the rule of law and sustainable development were not overlooked.[13] Pursuant to that request, efforts were made to ensure that the message of UNCITRAL is conveyed to the Open Working Group during its deliberations. As a result, the chairperson of UNCITRAL delivered a statement at

---

[8] Ibid.

[9] www.idea.int/democracydialog/inter-regional-workshop-on-regional-organizations-rule-of-law-and-constitutional-governance.cfm.

[10] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 273.

[11] www.unrol.org/article.aspx?article_id=6.

[12] http://sustainabledevelopment.un.org/owg.html.

[13] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 274-275.

the eighth session of the Open Working Group (New York, United States of America, 3-7 February 2014).[14] In addition, in cooperation with the Asian-African Legal Consultative Organization (AALCO), the International Development Law Organization (IDLO) and the International Chamber of Commerce (ICC), the UNCITRAL secretariat organized a side event on the margins of that session of the Open Working Group on the enabling environment for rule-based business, investment and trade (New York, United States of America, 6 February 2014).[15] On both occasions, the importance of duly taking into account the contribution of commercial law to the rule of law and sustainable development and the need to continuously build adequate capacity of States in the commercial law field were highlighted.

21. A similar message was conveyed at the IDLO-organized conference "Constructing the global agenda: the rule of law as a driver of change" (The Hague, The Netherlands, 2 April 2014) where the UNCITRAL secretariat addressed the conference under the theme "Looking beyond 2015: equality, opportunity, sustainability and the rule of law".[16] The secretariats of UNCITRAL and IDLO explored ways for closer coordination and cooperation on issues of common interest, recognizing that "IDLO is the only intergovernmental organization with an exclusive mandate to promote the rule of law"[17] and UNCITRAL is "the core legal body within the United Nations system in the field of international trade law".[18] Possible involvement of UNCITRAL in projects on the promotion of the rule of law implemented or planned by IDLO in several jurisdictions was particularly discussed.

2. Procurement

22. In accordance with requests of the Commission and Working Group I (under its former mandate on Public Procurement), the Secretariat has established links with other international organizations active in procurement reform to foster cooperation with regard to the UNCITRAL Model Law on Public Procurement (2011) and its accompanying Guide to Enactment (2012). The aims of such cooperation are to ensure that reforming governments and organizations are informed of the policy considerations underlying those texts, so as to promote a thorough understanding and appropriate use of the Model Law, at both regional and national levels. The Secretariat is taking a regional approach to this cooperation, and activities with the multilateral development banks in several regions, focusing on good governance and anti-corruption (in which procurement reform plays a pivotal role), are envisaged.

---

[14] The statement by Mr. Michael Schoell is available at http://sustainabledevelopment.un.org/owg8.html, under "Statements & Presentations".

[15] Information about the side event may be found at http://sustainabledevelopment.un.org/owg8.html.

[16] www.idlo.int/news/highlights/constructing-global-agenda-rule-law-driver-change.

[17] www.idlo.int/about-idlo/mission-and-history.

[18] See e.g. most recently, General Assembly resolution 68/106, the fifth preambular paragraph.

23. To this end, the Secretariat participated, among others, in the following activities:

(a) The work of the World Bank's International Advisory Group on Procurement, which advises the World Bank on its Procurement Policy Review, its new Program-for-Results (PforR) financing instrument, the procurement function in the context of public financial accountability, and the need to strengthen contract management. This included participation in a European members' meeting, hosted by the World Trade Organization (WTO), to review and comment on the World Bank's Independent Evaluation Group review into the existing system at the World Bank (Geneva, Switzerland, 14 November 2013), and a separate project to develop a system for benchmarking public procurement;

(b) The work of the team of specialists in Public-Private Partnerships (PPPs) of the United Nations Economic Commission for Europe (UNECE), which meets and reviews policy issues in PPPs, including on the role of PPPs in financing the post-2015 United Nations Development Agenda;

(c) The work of the OECD's Meeting of Leading Practitioners on Public Procurement and ongoing work on key issues in updating the OECD Recommendation on Enhancing Integrity in Public Procurement, the aim of which is to provide guidance to decision makers on how to use procurement as a strategic function of governments, and in designing procurement performance indicators (ensuring the performance indicators are based on UNCITRAL objectives); and

(d) The work of the Sustainable Public Procurement Initiative Network established by the United Nations Environment Programme (UNEP), including serving on its working groups on developing principles for sustainable public procurement, addressing legal barriers, and promoting collaboration between international organizations.

3. Dispute settlement

24. The Secretariat activities in the area of international commercial arbitration and conciliation included:

(a) Consultations in relation to a United Nations Conference on Trade and Development (UNCTAD) publication on investor State dispute settlement in order to ensure that this initiative takes account of the work of UNCITRAL in the field of transparency in treaty-based investor-State arbitration; and contribution to the UNCTAD's investment policy hub in relation to UNCITRAL's work in the field of transparency;

(b) Consultation and coordination work with the International Finance Corporation (IFC), World Bank Group, for the preparation of a note on "Arbitrating and Mediating Dispute Indicators", as part of the "Foreign Direct Investment Regulations Database" project; and

(c) Consultation with the International Court of Arbitration of the International Chamber of Commerce, the International Council for Commercial Arbitration and the Chartered Institute of Arbitrators for the preparatory work on the revision of the UNCITRAL Notes on Organizing Arbitral Proceedings (1996).

4. Electronic commerce

25. The Secretariat has been particularly active in coordinating with international and regional organizations involved in the formulation of legal standards in the field of electronic commerce to ensure their compatibility with UNCITRAL texts and principles.

26. Activities included the following:

(a) Upon invitation by the Arab Information and Communication Technology Organization, the Secretariat participate in the third Arab Forum on e-transactions Security & Public Key Infrastructure (PKI), Panel Four "Legal framework: toward PKI interoperability at the regional and international levels" (Tunis, 24-25 September 2013). The panel discussed the basic legal framework required for electronic transactions and the possibility to achieve interoperability among electronic signatures, including PKI-based ones;

(b) Ongoing coordination with the United Nations Centre for Trade Facilitation and E-business (UN/CEFACT) on the revision of UN/CEFACT Recommendation 14 (Authentication of trade documents) and work related to single windows interoperability (see A/CN.9/776) was ensured;

(c) The chairperson of UNCITRAL delivered the keynote speech at the conference "Facilitating Trade in the Digital Economy", organized by the International Chamber of Commerce in cooperation with UNECE and the Federal Department of Foreign Affairs of the Swiss Confederation. In that speech, the chairperson stressed the importance of legislatively implementing the fundamental principles of UNCITRAL texts on electronic commerce, namely non-discrimination of electronic communications, technology neutrality and functional equivalence, and of ensuring the application of those principles to private and public sectors alike in order to create an enabling legal environment for paperless trade at the national and international levels.

5. Security interests

27. Coordination with relevant organizations was pursued to ensure that States are offered comprehensive and consistent guidance in the area of secured transactions law.

28. Specific activities of the Secretariat included:

(a) Coordination with Unidroit to ensure that the Unidroit Principles on the Operation of Close-out Netting do not overlap or conflict with the security interests texts prepared by UNCITRAL;

(b) Coordination with the HccH to ensure that the draft Hague Principles on the Choice of Law in International Contracts are consistent with the security interests texts prepared by UNCITRAL;

(c) Coordination with the World Bank to prepare a revised version of the World Bank Standard on Insolvency and Creditor Rights that would include the key principles of the UNCITRAL Legislative Guide on Secured Transactions;

(d) Coordination with IFC in providing law reform assistance to States in line with the recommendations of the UNCITRAL Legislative Guide on Secured Transactions;

(e) Coordination with the work of the Organization of American States in local-capacity building with respect to secured transactions; and

(f) Coordination with the European Commission to ensure that a coordinated approach is adopted with respect to the law applicable to third-party effects of assignments of receivables.

6. Commercial Fraud

29. Further to the request of the Commission (A/63/17, para. 347; A/64/17, para. 354, and A/68/17, para. 312) in relation to commercial fraud, the Secretariat continued to coordinate with the United Nations Office on Drugs and Crime (UNODC) in its work on economic crime and identity fraud. In particular, the Secretariat remains a member of UNODC's core group of experts on identity-related crime, which was formed to bring together on a regular basis representatives from governments, private sector entities, international and regional organizations and academia to pool experience, develop strategies, facilitate further research and agree on practical action against identity-related crime. Work planned by the UNODC core group of experts on the development of model legislation on identity-related crime did not proceed due to a lack of extrabudgetary resources, however the Secretariat will continue to participate in the core group of experts once its work proceeds. The Commission may also wish to note that UNODC also plans to develop, again subject to the availability of extrabudgetary funds, a web-based repository of information on identity-related crime, as well as a comprehensive package of training tools (see E/CN.15/2014/17, paras. 72 to 75 for more details).